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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Price Cap Regulation of)
Local Exchange Carriers) CC Docket No. 93-179
)
Rate-of-Return Sharing)
and Lower Formula Adjustment)

OPPOSITION TO STAY

Pursuant to Section 1.45(d) of the Commission's rules, 47 C.F.R. § 1.45(d), AT&T Corp. ("AT&T") hereby opposes the "emergency motion" of the Ameritech Operating Companies ("Ameritech") to stay the effectiveness of the Commission's Add-back Order¹ pending judicial review of that decision. As shown below, Ameritech's stay motion clearly fails to satisfy the applicable legal standard for such relief, and should be denied.

The Add-back Order resolved an important implementation issue regarding the sharing mechanism of the Commission's LEC price cap plan. Specifically, the Commission concluded there that, in order to preserve its intended allocation of efficiency gains between those carriers and their ratepayers, LECs that incur a sharing obligation in one year must "add-back" that amount when

¹ Price Cap Regulation of Local Exchange Carriers (Rate-of-Return Sharing and Lower Formula Adjustment), CC Docket No. 93-179, Report and Order, FCC 95-133, released April 14, 1995 ("Add-back Order").

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computing their interstate rate of return for the following year.² By so doing, the Commission concluded it would maintain consistency between the calculation of LEC earnings under incentive regulation and the computation of those carriers' refund obligations under rate-of-return regulation, which included an "add-back" mechanism.

Ameritech fails to show any infirmity in the Commission's decision -- much less that there is a likelihood of success on its appeal of the Add-back Order, as required to secure a stay of that order.³ Its stay motion merely asserts (p. 2) in conclusory terms that the Commission's comparison between the incentive regulation and rate-of-return refunds is "legally unsustainable" because, unlike a refund, the sharing mechanism entails no prior finding that the LECs' earnings were unlawful.

This observation provides no basis for a stay. As a threshold matter, Ameritech is now foreclosed from appellate review of the lawfulness of the sharing mechanism. Moreover, Ameritech conveniently ignores that

² Similarly, LECs that implement a lower formula adjustment in one year must also "add-back" the adjustment amount when computing their interstate earnings in the subsequent year.

³ See Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

the Add-back Order, while it cited the procedures followed under of rate-of-return regulation, made clear (§ 32) that those policies were merely "relevant by analogy" to the price cap regime. A refund of past unlawful earnings differs fundamentally from sharing under incentive regulation; that mechanism instead provides a one-time (and purely prospective) adjustment to a LEC's price caps to correct for an understatement of the Commission's prescribed productivity offset.⁴

Additionally, the Add-back Order explained that the add-back procedure is integrally related to the earnings calculation on which the sharing mechanism itself is premised.⁵ The sharing mechanism, in turn, is "[o]ne of the basic elements of the current [LEC] price cap plan" ⁶ Given the critical role of proper earnings computation to the operation of the LEC price

⁴ Indeed, Ameritech concedes (p. 2) that the sharing mechanism is unlike a refund, because the price cap plan requires sharing of only half of a LEC's earnings between 12.25 percent and 16.25 percent (or, if the LEC has elected the higher productivity offset, 17.25 percent).

⁵ As the Add-back Order states (§ 22), the purpose of requiring price cap LECs to adjust their return calculations in this manner is to "ensure[] that the earnings thresholds applied to determine [those] LECs' sharing obligations are those we intended when we adopted these mechanisms." Elsewhere in the Add-back Order, the Commission characterizes the add-back requirement as "an essential element of[] the system of price cap regulation that we adopted for LECs in 1990." Id., § 33.

⁶ Id., § 32.

cap plan, the Commission was well justified in concluding that add-back is necessary to preserve that regulatory scheme.

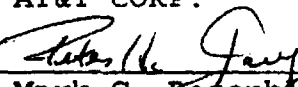
Ameritech also fails to satisfy the other standards for a stay. In particular, the motion erroneously claims (p. 4) that granting such relief would not injure other parties or harm the public interest. The implementation of the Add-back Order in the LECs' annual 1995 access tariffs, which Ameritech seeks to preclude, is likely to result in significant access charge reductions to interexchange carriers. Depriving access customers of these cost savings pending review of the Add-back Order would therefore impose serious hardship on those parties, especially in light of the lack of basis for Ameritech's appeal. Ameritech's additional claim that the Add-back Order will result in "diminished quality of service," and that a stay thus would serve the public interest, is devoid of any factual support.

WHEREFORE, for the reasons stated above, the
Commission should deny Ameritech's motion for stay.

Respectfully submitted,

AT&T CORP.

By


Mark C. Rosenbaum
Peter H. Jacoby

Its Attorneys

295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-3539

May 5, 1995

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that
on this 5th day of May, 1995, a copy of the foregoing
"Opposition to Stay" of AT&T Corp. was mailed by U.S. first
class mail, postage prepaid, to the parties listed below.

Lawrence R. Sidman
Eric T. Werner
Verner, Liipfert, Bernhard,
McPherson, and Hand, Chtd.
901 Fifteenth St., NW., Suite 700
Washington, D.C. 20005-2301
Attorneys for the Ameritech
Operating Companies

Michael S. Pabian
Ameritech
2000 W. Ameritech Center Drive
Hoffman Estates, IL 60196-1025


Ann Marie Abrahamson